

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 808 of 2005

P. Pitchumani .. Petitioner
versus
M/s.Duke Off-Shore(P) Ltd. & Anr. .. Respondents

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Mr.A.D. Shetty a/w Ms.Rita Joshi for the petitioner.
None for the respondent.

CORAM : D.G. KARNIK, J
DATED : 12th June 2006.

P.C:-

1. This petition is directed against the award dated 5th November 2004 passed by 3rd Labour Court, Mumbai rejecting the prayer of the petitioner for reinstatement, and dismissing the reference.

2. The petitioner is a graduate and was appointed as a "Piping Engineer" by the respondent no.1 Company. In July 1993, the petitioner was posted in charge of Hazira work of the respondent no.1 company. According to the petitioner, he was refused entry to his place of work on 16th August 1994 and thereby his services were terminated. The petitioner therefore moved the Government for a reference alleging illegal termination of his services. Accordingly, the reference was made to the labour court under section 10 of the Industrial Disputes Act. The petitioner filed his claim statement before the labour court alleging that his services were illegally terminated by the respondent no.1. The respondent contested the claim of the petitioner. The respondent contended that the petitioner was not a workman. He was appointed as a Project Co-ordinator and posted at Hazira as a Piping Supervisor, on the monthly salary of Rs.6,500/-. As the petitioner was engaged in a supervisory capacity the petitioner was not a workman and the labour court therefore had no jurisdiction to order reinstatement. On these pleadings, the labour court inter alia framed an issue whether the petitioner was a workman within the meaning of section 2(s) of the Industrial Disputes Act. The

labour court held that the petitioner was not a workman. In this view of the matter, the labour court dismissed the reference and declined to order reinstatement of the petitioner. That judgement is impugned in this petition.

3. There is no dispute between the parties that the petitioner was drawing monthly salary of Rs.6500/-. However according to the petitioner, he was not employed in a supervisory capacity and therefore, he was a workman. The question whether the petitioner is a workman or not is essentially a question of fact. On appreciation of the evidence adduced before it, the labour court has come to the conclusion that the petitioner was employed in a supervisory capacity and was not a workman.

4. Learned counsel for the petitioner however contended that the finding recorded by the labour court that the petitioner was engaged in a supervisory capacity is a finding which is not supported by evidence and is perverse. It is settled principle of law that in a writ jurisdiction, the High Court is not entitled to go into the correctness of a finding of fact. If the finding recorded by a court or a tribunal

is a possible finding of fact then the High Court exercising writ jurisdiction under Article 227 of the Constitution of India cannot substitute its view on the evidence in place of the view taken by the tribunal unless the view taken is so unreasonable that no reasonable tribunal could have reached such a view on the evidence adduced before it. It would therefore be necessary to see whether the finding recorded by the labour court is perverse which I would do hereafter.

5. As far as the pleadings go, in the statement of claim filed before the labour court, the petitioner has stated as under :

"As a Piping Engineer on 27th July 1993 the employer directed the workman (petitioner) to proceed to Hazira near Surat and do the work of giving technical advise to the ONGC officials at Hazira"

Thus the petitioner himself has stated that he was appointed as Piping Engineer. The petitioner has further stated that he was assigned the work of giving

technical advise. These are the statements made by the petitioner in the statement of claim itself. In its written statement the respondent no.1 has stated that the petitioner was appointed as a Project Co-ordinator and was posted at Hazira as Piping Supervisor and was required to work as a Quality Control Inspector. In paragraph 3 of the written statement, the respondent no.3 has categorically stated: "the company states that the workman was a supervisor in charge at Hazira and the decisions and actions of the project work of the Company were entirely dependent on the reports of the workman (petitioner)". The respondent has therefore clearly alleged that the petitioner was in charge of the Company's work at hazira. The petitioner chose to file rejoinder to this written statement. However in the rejoinder, the respondent has not specifically denied the statement that he was in charge of the company's work at Hazira. The very fact that the petitioner was in charge of the work of the Company at Hazira would show that he person was engaged in supervisory capacity. These are the pleadings of the parties.

6. In the evidence, Mr.George Duke, Managing

Director of the respondent has stated that the petitioner was doing work at Hazira Plant and was appointed as a Project Manager/Co-ordinator and had two other engineers viz. Natarajan and Mr.Jag Mohan working under him. He has further stated that the petitioner was in charge of the inspection work at Hazira. This statement has not been shattered in the cross-examination. It was only suggested to Mr.Duke in the cross-examination that he had no documentary evidence to show what was the duty list given to the petitioner or that Mr.Natrajan or Mr.Jag Mohan were working under the petitioner. Thus reading the pleading of the parties and the evidence on record shows that the view taken by the labour court is a possible view based on appreciation of evidence and cannot be said to be a view that no reasonable tribunal would have taken.

7. For these reasons, I am of the view that the view taken by the labour court is not only a possible view but a probable view which cannot be interfered with in a writ jurisdiction. In the circumstances, there is no merit in the petition which is hereby dismissed. Rule discharged with no order as to costs.

(D.G. KARNIK, J)